

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AMERICOAL CORPORATION

COMPLAINANT

VS.

BOONE COUNTY WATER AND SEWER DISTRICT

DEFENDANT

CASE NO. 90-108

O R D E R

Contending that the record contains all factual information necessary for a decision, Boone County Water and Sewer District ("Boone District") has moved to submit this matter for decision. Americoal Corporation ("Americoal") objects to this motion and asserts that a hearing is necessary to properly adjudicate its complaint.

Americoal brought its complaint pursuant to KRS 278.260. This statute provides that a complainant "shall be entitled to be heard in person or by an attorney and to introduce evidence." KRS 278.260(3). It further provides that "[n]o order affecting the rates and service complained of shall be entered. . .without a formal public hearing."<sup>1</sup> KRS 278.260(1). As factual issues are

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<sup>1</sup> Public hearing has been defined as meaning "the right to appear and give evidence, and also the right to hear and examine the witnesses whose testimony is presented by opposing parties." Mayfield Gas Co. v. Pub. Serv. Comm'n, Ky., 259 S.W.2d 8, 10 (1953) (quoting Farmers' Elevator Co. v. Chicago R.I. & P. Railway Co., 107 N.E. 841, 843 (Ill., 1915)).


in dispute, as these issues involve a utility's rate, and as no evidence has yet been heard in this matter, KRS 278.260 clearly requires a hearing. Furthermore, absent unusual circumstances, we believe that a complainant is entitled to be the master of his case and should have the right to determine how it is presented to the Commission.

IT IS THEREFORE ORDERED that Boone District's motion to submit case on the record is denied.

Done at Frankfort, Kentucky, this 21st day of August, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

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Commissioner

ATTEST:

  
Executive Director